***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION NO : 2298 of 2005

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% 9.03.2005

Between:

Ch. Prasanth Kumar, S/o. Ratnam,
R/o. Venkateswarapuram, Nellore Town, Nellore District.

..... PETITIONER

AND

-

1 Superintendent of Police, Nellore District, Nellore and 3 others

...RESPONDENTS

! COUNSEL FOR THE PETITIONER: MR.K. DURGA PRASAD

^ COUNSEL FOR THE RESPONDENTS: G.P.FOR HOME

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

-

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

-

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Between:

Ch. Prasanth Kumar, S/o. Ratnam,
R/o. Venkateswarapuram, Nellore Town, Nellore District.

..... PETITIONER

AND

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1 Superintendent of Police, Nellore District, Nellore.
2 Sub Inspector of Police, Atmakur P.S. Nellore District.
3 Circle Inspector of Police, Atmakur P.S. Nellore District.
4 B.V. Ramana S/o. Guravaiah
R/o. Lawyer Nazir Street, Jagannadharaopet, Atmakur, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of mandamus, declaring the action of the respondents 1 to 3 herein in altering the F.I.R.No. 150/2004, DT. 3-12-2004 FROM SEC. 174 CRL.P.C. to Sec. 306 IPC instead of Sec. 302 IPC as illegal, null, void and arbitrary, and consequently direct the Respondents 1 to 3 herein to register the case under Sec. 302 IPC against the 4th respondent herein; and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.DURGA PRASAD

Counsel for the Respondent No 1 to 3: GP FOR HOME

Counsel for the Respondent No.4: …

The Court made the following :

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO.2298 OF 2005

ORDER:

This writ petition is filed seeking a declaration that the action of the respondents 1 to 3 in altering the provision of law indicated in FIR No.150 of 2004 of Atmakur P.S., Nellore District, from Section 174 Cr.P.C. to Section 306 IPC, is illegal and arbitrary.

A consequential direction is sought for alteration of the provision to Section 302 IPC.

The petitioner states that his sister, by name B. Vidhyadhari was married to the 4th respondent. It is alleged that she was ill-treated and harassed by the 4th respondent. It is stated that on 3.12.2004, Vidyadhari hanged herself with a saree and died. FIR No.150 of 2004 was registered on 3.12.2004. The provision of law indicated therein is Section 174 Cr.P.C. According to the petitioner, the 4th respondent committed the murder. He states that during the course of investigation, he made a complaint to the effect that the 4th respondent killed the deceased Vidhyadhari and that it is not a case of suicide. The petitioner complains that instead of mentioning Section 302 IPC, the respondents 1 to 3 have indicated 306 IPC, in the FIR.

The learned Government Pleader for Home, on the other hand, submits that the investigation is yet to conclude and unless there exists a clear and sufficient material to implicate the 4th respondent, Section 302 IPC cannot be invoked just for asking of it.

Before undertaking the discussion on merits of the matter, one important aspect needs to be clarified. The petitioner proceeded on the assumption that Section 174 Cr.P.C., which was initially mentioned in FIR was altered to that of Section 306 IPC. The same does not appear to be well founded. Section 174 Cr.P.C. does not by itself define an offence nor does it provide for any punishment. It is purely procedural in nature. It imposes an obligation on the police, to enquire and report in cases of suicide and other related matters. Obviously, this gets attracted whenever there is no complaint from any person in relation to a death, which takes place within the limits of a police station. With a view to ensure that in an unreported or uncomplained of incident of suicide or death does not remain unattended to. The legislature had imposed an obligation on police to undertake investigation and to draw up a report, as to the apparent cause of death duly describing the nature of wounds, fractures etc., found on the dead body. The Section has been amended through Act No.46 of 1983, bringing in its fold the instances of death of woman as a result of suicide, if it is within seven years of marriage.

Invocation of Section 174 Cr.P.C. would only indicate the manner in which the cognizance of the matter is to be taken. The actual provision, which defines the crime and which provides for punishment, needs to be mentioned depending on the

result and outcome of the investigation. Since Section 174 Cr.P.C. on the one hand and various provisions of Indian Penal Code on the other, relate to different spheres. The question of one being altered to the other does not arise. The former is procedural, and the latter is substantive, in nature.

It is on the basis of the investigation that respondents 1 to 3 have indicated Section 306 IPC in the FIR. It is not as if the same is final. If the petitioner is able to assist the investigation and make available such material to the investigation, as is sufficient to implicate the 4th respondent for the offence under Section 302 IPC, it is always open to the investigating agency to make necessary amendments, up to the stage of filing charge sheet. Even after a charge sheet is filed, the Court trying the offence can alter the charge, if the evidence before it warrants such alteration. Therefore, no relief can be granted to the petitioner at this stage. If he is so advised, he can assist the prosecution, in this regard. Depending on the nature of the material that becomes available, and progress in the matter, the corresponding provision of law can certainly be invoked, either during the course of investigation or during the trial.

The writ petition is accordingly disposed of.

9th March, 2005

Note:

L.R. Copy to be marked.

Nn.

To

One Fair copy to the Hon'ble Mr. Justice L. Narasimha Reddy

(For his lordship's kind perusal)

1 The Superintendent of Police, Nellore District, Nellore.
2 The Sub Inspector of Police, Atmakur P.S. Nellore District.
3 The Circle Inspector of Police, Atmakur P.S. Nellore District.
4 Two C.Cs to the G.P. for Home, High Court Buildings, High Court of A.P., Hyderabad (O.U.T.)

5. Two C.D. copies.

6. The Under Secretary, Union of India, Ministry of Law, Justice

& Company affairs, New Delhi.

7. The Secretary, AP Advocates' Association Library, High Court

Buildings, Hyderabad.

8. Eight L.R. copies.